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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 245.

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

BRIEF OF NATIONAL BULK CARRIERS, INC., AS *AMICUS CURIAE.*

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Preliminary Statement.

This *amicus curiae* brief is being submitted in behalf of National Bulk Carriers, Inc. (hereinafter referred to for convenience as "*National Bulk*") which has petitioned the Supreme Court of the United States for a writ of certiorari to the United States Court of Appeals for the Third Circuit, October Term, 1964, No. 246, to review the Court's judgment on an issue identical to that of the case of *Waterman Steamship Corporation* v. *United States*, October Term, 1964, No. 245. The decision in the *Waterman Steamship* case will govern the disposition of the *National Bulk* case and consequently this brief is being filed to set forth the viewpoint of *National Bulk* without repetition of the facts or detailed argument which counsel for *Waterman Steamship* (hereinafter referred to for convenience as "Petitioner") must necessarily explore.

Summary of Argument.

The main thrust of the argument herein is that the cost basis of vessels purchased by petitioner must be the amount paid by petitioner for such vessels. Section 9 of the Merchant Ship Sales Act of 1946 does not change the ordinary tax rule that the economic investment in an asset represents its cost. Section 9 merely sets forth the amount of adjustment to be made in the purchase price of vessels and its language is clear that it provides only a formula to be applied in its entirety in determining the adjustment. The legislative history, both before and after the enactment of Section 9, clearly establishes that the basis for depreciation of vessels is actual economic cost and does not confirm Government's contention that statutory sales price equals tax cost.

ARGUMENT.

I.

Petitioner's cost basis for depreciation under I.R.C. (1939) Section 113 is its actual economic investment in the vessels.

All parties agree that Petitioner's basis for depreciating the vessels in question is their cost basis under Section 113 of the Internal Revenue Code of 1939 (hereinafter referred to for convenience as the "Code"). All parties likewise agree that Petitioner's original cost was equal to its economic investment in the vessels and agree as to the amount thereof. It is, of course, elementary and beyond argument that Petitioner's present cost basis for the vessels is determined historically by reference to its original cost and by

adjusting such cost to reflect each subsequent transaction affecting its economic investment in the vessels.

All parties agree as to the effect of applying this historical determination of cost to each of Petitioner's subsequent transactions which affect its economic investment, except for the transaction in which Petitioner's original cost was adjusted through the receipt of a refund of a portion of such cost pursuant to Section 9 of the Merchant Ship Sales Act of 1946 (C. 82, 60 Stat. 41, hereinafter sometimes referred to for convenience as the "Act"), which will be discussed below.

II.

Section 9 of the Act clearly authorized payment or credit to petitioner of a single adjustment in its original economic investment.

Section 9 of the Merchant Ship Sales Act of 1946 provides:

> "(a) A citizen of the United States who on the date of the enactment of this Act (March 8, 1946)—
>
> "(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; * * *
>
> "shall, except as hereinafter provided, be "entitled to *an adjustment* in the price of such vessel * * *
>
> "(b) Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. *The amount of such adjustment shall be determined* as follows:*" (Emphasis supplied.)

Immediately after the words of the statute set forth above are eight subsections, each describing the method of computation for one item in a complicated formula which is to be followed in calculating the amount of the adjustment. Some of these formula items result in credits in favor of the Maritime Commission, while others result in credits in favor of the party applying for the adjustment. Finally, the credits in favor of the Commission and in favor of the applicant are offset and any balance remaining in favor of the applicant represents the amount of the adjustment payable to him. The words of the statute quite clearly provide that each of these formula items is merely a factor to be determined in calculating the total amount of the adjustment.

III.

The amount of the Section 9 adjustment received by Petitioner clearly reflects the economic effect of the adjustment.

The basic purpose of the Act was twofold. First, it authorized the sale of certain surplus vessels at an amount equal to their statutory sales price—a defined term. Secondly, a considerable number of similar vessels, including those involved herein, had been sold prior to the Act, many at prices higher than the Statutory Sales Price on similar vessels and under sales contracts which required a subsequent reduction in the selling price in the event of later legislation authorizing a sale of similar vessels at reduced prices. (Page 6 of Senate Report No. 807, 79th Congress, 1st Session.)

The amount of the Section 9 adjustment received by Petitioner clearly reflects the economic effect of the com-

pleted adjustment transaction by means of which Petitioner received back a part of its original economic investment in these vessels. Thus Petitioner's economic investment for tax basis purposes was concededly $47,149,043.42 immediately prior to the adjustment. The amount of the adjustment under Section 9 was concededly $20,468,904.07. Petitioner, having therefore economically benefited by a return of some 20 million dollars of its original investment now should have a remaining tax cost basis for the vessels equal to the balance of $26,680,139.35.*

In discussing the effect of the receipt of such a Section 9 adjustment, Judge Madden, in *Socony Mobil Oil Company, Inc.* v. *United States*, 287 F. (2d) 910, 912 (Ct. Cls. 1961), stated:

> "Section 23 of the Internal Revenue Code of 1939, 26 U. S. C. (1952 ed.) Sec. 23, permits a deduction for depreciation of property used in the taxpayer's trade or business. Section 113 of the Code, 26 U. S. C. (1952 ed.) Sec. 113, says:
>
> 'The basis of property shall be the cost of such property.'

---

* Economic investment and agreed tax cost basis immediately prior to the Section 9 adjustment

Cash	$16,235,446.21
Adjusted basis of four vessels traded in	175,876.40
Balance of outstanding mortgage indebtedness	30,737,720.81
Total	$47,149,043.42
Section 9 adjustment—reduction of outstanding mortgage indebtedness 3/8/46	(20,468,904.07)
Tax Cost basis as of 3/8/46	$26,680,139.35

With regard to the basis immediately prior to the Section 9 adjustment, it is agreed that due to a cash payment in reduction of the mortgage on 3/8/46, cash investment on that date was increased and mortgage indebtedness was reduced by $86,037.70. This transaction, however, did not change the total investment.

> It would seem that if one has bought property and paid $10,000 for it, and the seller later offers to readjust the price, *according to a complicated formula,* and when the computation is completed, the seller gives back to the buyer $3,117.24, the property has cost the buyer $6,882.76. That being, in fact, his cost, it would seem to be his basis for computing depreciation, if the property is depreciable for tax purposes." (Emphasis supplied.)

It is well established in the tax law that monies received for the sale of property do not change their character merely because of the fact that the purchase price is predicated upon other facts, such as gross income from the property, net income from the property, etc. See *Comm.* v. *Hopkinson,* 126 F. 2d 406 (C. A. -2 1942); *P. J. Massey* v. *U. S.,* 226 F. 2d 724 (C. A. -7 1955); *Edward C. Myers,* 6 T. C. 258 (1946) acq., 1958-2 C. B. 6. The Petitioner is simply asking that its cost basis be arrived at by adding up all the payments made by it with respect to the purchase price of the vessels, and subtracting the adjustment in such purchase price received by it under Section 9 of the Act, irrespective of the fact that a complicated formula was employed by the parties to determine the amount of such adjustment.

IV.

The plain meaning of the clear statutory language should be recognized in construing Section 9.

In considering the proper construction of Section 9, since the statutory language is completely clear, this Court's rules of statutory interpretation require that the meaning of the plain words be recognized.

In *Comm.* v. *Korell,* 339 U. S. 619, 70 S. Ct. 905 (1950) this Court was faced with the issue of whether a taxpayer

who purchased convertible bonds at a premium was entitled to an amortization deduction based upon the difference beween the purchase price and the call price, regardless of whether the premium had been paid for the conversion privilege. The Supreme Court allowed the full amortization although it recognized that Congress could have provided for a narrower definition of premium so as to disallow such deduction. Of immediate interest, however, is this Court's recognition of the clear statutory language:

> "But we cannot reject the clear and precise avenue of expression actually adopted by the Congress because in a particular case we may know, if the bonds are disposed of prior to our decision, that the public revenues would be maximized by adopting another statutory path . . . it cannot be argued that Congress lacked the legislative discretion to have reached such a conclusion."

Subsequently, this Court applied this principle even though an amended statute to alter the *Korell* result still produced for the taxpayer an apparent tax-saving windfall, rather than, as in the case at Bar, allowed for the application of orthodox tax principles.

After Congress passed legislation to disallow amortization of a premium allocable to a conversion privilege the Government challenged a taxpayer who purchased corporate bonds at a premium and amortized the difference between the premium price and the special 30-day call price at which the issuer could redeem the bonds from specially designated funds. The Government argued that the higher general 30-day call price should be used rather than the special call price. The Supreme Court, in holding for the taxpayer in *Hanover Bank* v. *Comm.*, 369 U. S. 672; 82 S. Ct. 1080 (1962) stated as follows:

> "A firmly established principle of statutory interpretation is that 'the words of statutes—including revenue acts—should be interpreted where possible in their ordinary everyday senses.' *Crane* v. *Commissioner*, 331 U. S. 1, 6. The statute in issue here, in plain and ordinary language, evidences a clear congressional intent to allow amortization with reference to any call date named in the indenture. Under such circumstances we are not at liberty, notwithstanding the apparent tax-saving windfall bestowed upon taxpayers, to add to or alter the words employed to effect a purpose which does not appear on the face of the statute . . ."

Since the statutory language is clear, the applicable statutory rule of construction, established by the foregoing decisions, is that the words should be given their plain meaning.

V.

Lower court's construction of Section 9 is erroneous since it is based on only a part of the statutory language and is contrary to the language *in toto*.

The Court of Appeals for the Fifth Circuit, in analyzing this issue, quoted the opening paragraph of Section 9(b) and then briefly summarized the formula factors provided for in the subsections thereof. The court summarily holds that the language of the Act and the legislative history revealed an intent on the part of Congress that the purchases of vessels occurring prior to enactment of the Act be treated as if the purchase had occurred on the date of the enactment at the statutory sales price for purposes of determining Petitioner's tax cost basis. The lower court's decision in effect is that the statutory language of Section 9 requires that by operation of law there is to be a

new subsequent sale of the vessel to Petitioner, despite the fact that the vessel was already purchased previously at a considerably higher price than the amount of the new purchase price. Such a construction does not adequately account for three all-important facts:

(1) The vessel was in fact purchased prior to the enactment of the Act;

(2) the actual purchase price paid on the original purchase was more than the statutory sales price, as defined; and

(3) the actual adjustment in purchase price allowed to Petitioner was not large enough to reduce that original purchase price to the statutory sales price.

To implement this construction, the Government has selected from all of the various factors in Section 9 going to make up the adjustment formula, those facts which will produce an amount which by coincidence equals the same amount as the statutory sales price in respect of Petitioner's vessels. Thus, the Government contends and the lower court has agreed that Petitioner's tax cost basis for the vessels should be determined as follows:

Economic investment and agreed tax cost basis immediately prior to Section 9 adjustment (same as Part III above)	$47,149,043.42
Section 9 adjustment—composed for this purpose of those portions of the adjustment formula under Section 9 which produce an amount equal to statutory sales price of vessels as calculated under Section 3(d) of the Act	29,151,061.58
Tax Cost basis as of 3/8/46	$17,997,981.84

Although the lower court's opinion quotes the full text of the opening paragraph of Section 9(b) in reaching its decision, it apparently read that language as though it did not contain the very vital phrases set out in brackets in the following quotation of this paragraph:

> "Such adjustment shall be made [, *as hereinafter provided,*] by treating the vessel as if it were being sold to the applicant on the date of the enactment of the Act, and not before that time. The amount of such adjustment shall be determined as follows: . . ."

The vital bracketed words which the Government's argument slights provide in context that, while to some extent for purposes of calculating the Section 9 adjustment the vessel will be treated as sold at a later date than the actual sale, that extent will be spelled out *"as hereinafter provided."* The various subsections of Section 9 then describe the various items going into the adjustment formula.

Certainly in this language there is no basis whatever for holding that there must be a complete treatment of the vessels *for all purposes,* including income taxation, as having been purchased on the date of the enactment of the Act at an arbitrary price, even for purposes which are beyond the specific language of Section 9. Yet from this incomplete quotation, the lower court apparently reasons that regardless of the actual amount of the adjustment reducing Petitioner's economic investment in the vessels, the only part of the adjustment that can be recognized for tax purposes is an amount equal to the amount which the statute establishes as the statutory sales price for the vessels. This conclusion erroneously relies upon the above language quoted out of context, and the words "statutory sales

price," which are in themselves somewhat confusing unless analyzed in context.*

The lower court, therefore, erroneously selected one phrase of Section 9 out of context in order to substantiate its conclusion that only a portion of the adjustment actually received must be considered as the adjustment under Section 9 for tax cost basis purposes. This conclusion is clearly contrary to the statutory language.

VI.

Absent specific statutory language, lower court's result is too unreasonable to attribute to congressional intent.

A comparison of the economic consequences of Petitioner's and Government's calculations of tax cost basis quickly reveals that under Government's and the lower

* The term itself tends to be confusing upon a cursory reference. However, closer examination of the entire statute reveals that the term is defined in Section 3(d) as simply "an amount" equal to a specified percentage of prewar domestic cost of the type of vessel, adjusted as therein specified. This definition has then been adapted as a legislative drafting technique to two different usages. First, and most important from the standpoint of the overall Act, Section 4(a) authorizes any citizen to apply to purchase a vessel then on hand at the statutory sales price. In this context, the Statutory Sales Price is the price at which a vessel then on hand would be sold subsequent to the enactment of the Act.

The second usage, on the other hand, and that applicable in situations such as the case at Bar, in which adjustments in original purchase price were to be received when vessels were purchased prior to the enactment of the Act, is quite different. In such instances, the Statutory Sales Price appears in Sections 9(b) and (c) simply as a convenient method of stating the adjusted prewar domestic cost of the vessel. See Sections 9(b)(1)(3) and (4), and (c)(2) and (3). In this latter context, the Statutory Sales Price is employed as a convenient method of stating an amount to be utilized in determining the amount of various items in the complicated adjustment formula and *no sale* of the vessel is involved.

court's construction of the effect of Section 9, Petitioner would have an agreed tax cost basis on March 7, 1946 of $47,149,043.42. On the next day, it would have a tax cost basis of $17,997,981.84. Although for tax cost basis purposes its economic investment in the vessels would be deemed to have been reduced $29,151,061.58, it will have actually received back as a Section 9 adjustment, however, only $20,468,904.07 of its tax cost basis. Thus, by operation of Section 9 as so construed, some $8,682,157.51 of Petitioner's economic investment in the vessels, which in fact has not been returned to it in the Section 9 adjustment transaction, suddenly is lost and becomes unrecognizable for tax purposes, without such loss being reflected in any way in its tax return.

Of course, if Congress had so desired, Section 9 could have been drafted to create a transaction which for income tax purposes results in a loss of economic investment in assets, without providing a deduction for such loss for purposes of calculating taxable income or expense. On the other hand, since the tax law is concerned with the economic realities of transactions, and Petitioner did in fact make the original economic investment which would now be reduced by operation of law, such a statute would be an unorthodox tax statute, to say the least. Under such circumstances, it is respectfully submitted that such an unusual result, which overrides and therefore in effect amends the normally applicable provisions of the Internal Revenue Code, should be provided for, if at all, in clear and specific statutory language. Such language is not present in Section 9.

Discussing this point, Judge Madden in the *Socony Mobil* opinion (p. 913) stated:

> "The Government does not deny that the plaintiff's depreciation should be based upon its cost. But it says that the plaintiff's 'cost' for this tax purpose is not the difference between what it originally paid and what it got back in the Section 9 readjustment. That means that the Government's asserted 'cost' is not the economic, dollars-and-cents cost, but an artificial figure, legally deemed, for this tax purpose to be the cost though it is not in fact the cost.
>
> Congress could, of course, have provided that a former purchaser of ships who desired to take advantage of the readjustment of price offered him by Section 9 should, as a condition of the readjustment, obligate himself to compute future depreciation on a basis other than actual cost. Congress could have done this expressly, or by writing a text from which such an implication would necessarily result. Congress has not done so expressly, and we do not find that it has shown an intent to do so."

Since Petitioner in fact has previously paid more than the statutory sales price for its vessels, if Congress had in fact desired to treat Petitioner for all purposes as having paid only the statutory sales price at a later date, the natural, logical, fair and equitable thing to do would be to refund the full difference between the higher price originally paid and the statutory sales price, or authorize a tax loss for any discrepancy. The statute does neither, and yet the Government and the lower court seek to construe it as requiring by operation of law that this sale be deemed to have taken place at a hypothetical price which bears no relation to Petitioner's investment in the vessels.

Section 9, under the lower court's construction, is so unorthodox and so drastic in its application that a prior purchaser, applying for relief under its provisions, could

be in a more disadvantageous economic position after tax than if he had applied for no Section 9 relief at all.

For example, in S. Rept. No. 1915, 81st Cong., 2d Sess., p. 3, reporting on H. R. 3419, which is discussed in Part VII below, the situation is presented of an American operator who buys a tanker for $2,800,000 and operates it under a charter with the Government until enactment of the Act. As of that date, the Act established a statutory sales price of $1,600,000 for similar tankers. An adjustment under Section 9 produces a refund to the operator of $400,000 under the adjustment formula.

After receiving payment of this refund, the operator could find that under the Government's construction his cost basis for the vessel somehow had been reduced from $2,800,000 to the statutory sales price of $1,600,000. This means that his depreciation expense deductions on the vessel would be reduced by the amount of $1,200,000 ($2,800,000 minus $1,600,000) and his ordinary taxable income increased by a like amount. Since that income was subject to Federal income tax at the rate of 38 per centum in 1946, the operator will find himself paying an additional tax bill totaling $456,000, if one makes the unwarranted assumption that the tax rates will not increase to over 38 per centum during the life of the vessel. The operator will have accepted a $400,000 price adjustment from the Government only to find that the same Government has taken away $456,000 in the form of taxes imposed over the remaining life of the vessel, and in reality the Government takes more as the tax rates increased in subsequent years.

The language of Section 9 does not even suggest the result as construed by the lower court. Government's argument, therefore, produces the unreasonable and anomalous situation of Congress intending to enact a relief provision

but simultaneously intending by the apparently clear language thereof to in effect so amend normal income tax principles that recipients might be even worse off after taxes than if they had forgone the relief. In any choice of constructions, the one producing such an unreasonable result should be avoided unless required by the specific language of the statute, which is absent here.

VII.

In the alternative, if language of Section 9 may be considered ambiguous, its legislative history does not support respondent's asserted construction.

A. Rejection by Congress of Senate Draft of Section 9 which would have specifically required result for which Government is presently arguing.

In the process of developing the legislation which ultimately became Section 9 of the Act, there was presented to Congress for its consideration two quite distinct methods of solving the problem of a price adjustment for prior purchasers, both methods taking into consideration various aspects of the previous transaction in an effort to make the price adjustment as equitable as possible for both parties. The first of these methods was incorporated in Section 9 of H. R. 3603, submitted to the House of Representatives. (See H. R. 3603, 79th Congress, 1st Session, in the House of Representatives, June 27 and June 28, 1945, referred to Committee and Committed to the Committee of the Whole House.)

This version of the Bill was rejected by the House in favor of a revision essentially similar to the Bill finally

enacted, referred to herein as the House Bill. See H. R. 3603, 79th Congress, 1st Session, in the Senate, October 3 (Legislative Day October 2), 1945 (as passed by the House on October 2, 1945). However, the Senate enacted a refined version of original H. R. 3603, 79th Congress, 1st Session, in the Senate, December 4 (Legislative Day October 29), 1945, referred to herein as the Senate Amendment.

The Senate Amendment was rejected in the legislative process in favor of the Bill which became law but it did, however, provide that the so-called statutory sales price should become the applicant's tax basis upon receipt of the tax adjustment. Discussing this point in the *Socony Mobil Oil Co.* case *supra* (p. 913), Judge Madden stated:

> "If this Senate bill had become law, the Government's position in these cases would be clearly correct. But in conference between the two houses, the House's version was adopted, with changes not here important, and that version was enacted as Section 9. See House of Representatives Conference Report No. 1526, 79th Cong., 2d Sess., to accompany H. R. 3603, dated February 6, 1946. The Conference Report makes no mention of the omission of Section 9(e)(1) of the Senate bill, quoted above, but does, at page 17, mention one modification which the conference had made in the House-enacted bill. The modification had to do with the year of taxability of the amount credited by the Commission to the prior purchaser as interest on his overpayment.
>
> "This legislative history shows that the committees of Congress gave minute attention to the tax consequences, current and future, of the readjustment authorized by Section 9. The bill as enacted by the Senate had in it an express provision that the statutory sales price should be the basis for future depreciation. The conference omitted this provision, and the Act as passed omitted it. There is no room

for an implication that Congress, having considered and omitted it, showed, by other parts of Section 9, an intent to retain it."

B. Enactment by Congress of H. R. 3419.

Another equally clear and even more explicit expression of Congressional intent occured in 1950, following the raising of this question by the Governmental tax authorities. The 81st Congress, 2nd Session, that year was composed of a large part of the members of the Congress which had enacted the Act in 1946 and the key committee chairmanships of which were not changed substantially. Both Houses, upon becoming aware of the question being raised, enacted H. R. 3419 which would have amended Section 9 in a manner which would have conclusively resolved any question of Congressional intent in this matter. The bill specifically stated that the Act was to be construed as contended for herein by Petitioner. Although the President utilized the pocket veto to prevent the bill from becoming law, it nevertheless stands as a beacon, so clearly illuminating the Congressional intent on this issue as to leave no shadow of a doubt.

This explicit expression of Congressional intent, made only four years after the enactment of the Act, is conclusive authority as to the significance of the Act on this issue. See *Sioux Tribe* v. *United States*, 316 U. S. 317 (1941), in which this Court was called upon to determine whether a certain statute passed in 1887 vested compensable title to the Indians holding land by Executive Order. In 1892, five years after passage of the 1887 statute, the Senate Committee on Indian Affairs had stated emphatically in a Senate Report that the 1887 statute did not confer such title. The Supreme Court, in deciding against the claim of the Indians, stated as follows:

> "This statement by the Committee which reported the General Allotment of 1887, made within five years of its passage, is virtually conclusive as to the significance of that Act."

The present case would appear to present no difficult question of statutory construction.

If, however, for any reason, any ambiguity exists in the statutory language, Congress has removed any doubts by stating how Section 9 of the Merchant Ship Sales Act should be construed. The Congress has said that the taxpayer is entitled to use the actual cost of the vessel (and not the "statutory sales price") in computing depreciation for purposes of Federal income tax. The Third Circuit cited *Fogarty* v. *United States,* 340 U. S. 8 (1950) as in effect precluding the application of the principle of the *Sioux Tribe* case. But *Fogarty* merely stated that if the meaning of a statute is determinable, then subsequent events would not change the meaning.

In *Federal Housing Administration* v. *The Darlington, Inc.,* 358 U. S. 89, 90 (1958), 79 S. Ct. 141, the Supreme Court stated as follows:

> ". . . Subsequent legislation which declares the intent of an earlier law is not, of course, conclusive in determining what the previous Congress meant. But the latter law is entitled to weight when it comes to the problem of construction. See *United States* v. *Stafoff,* 260 U. S. 477, 480, 43 S. Ct. 197, 6 L. Ed. 358; *Sioux Tribe* v. *United States,* 316 U. S. 317, 329-330, 62 S. Ct. 1095, 1100-1101, 86 L. Ed. 1501."

See also *The Glidden Company* v. *Olga Zdanok,* 370 U. S. 530, 541 (1962); 82 S. Ct. 1459.

At a minimum, therefore, H. R. 3419 is entitled to substantial weight, and when combined with the remaining leg-

islative history of the Act, leaves no doubt that the intention of Congress was not as stated by Respondent.

C. Committee Reports and Congressional Record.

In referring to Committee Reports for clarification of the Congressional intent, statements in the Senate Committee Report are helpful only in a negative way, since they elaborate upon a result which would have been produced by the Senate draft of Section 9, which was rejected by the Congress. On the other hand, it is significant that the very clear description of the results under that rejected Senate draft, and the results in the case at Bar for which the Government argues, coincide rather precisely. The rejection of the Senate draft quite clearly indicates an intention to reject the results thereof described in the accompanying Committee Report.

With regard to the remainder of the legislative history, it is respectfully submitted that in spite of some rather loose descriptive language on the floor of the House about the effect of the rather complicated formula for adjustments contained in Section 9, all of such history can reasonably be interpreted as explaining the operation of the formula. But only, however, (to borrow the language of the statute itself) *"as therein provided."* It is submitted that the only reasonable interpretation of these floor discussions is an attempt to explain how the statutory formula had been established, and not as an indication of an intent to extend the clearly limited language of the statute itself regarding the effect under the Section 9(b) formula of prior purchase of vessels.

In *National Bulk Carriers, Inc.* v. *U. S.*, 331 F. 2d 407, the United States Court of Appeals for the Third Circuit stated that

> "an examination of the statutory scheme of Sec. 9 together with a study of its legislative history convinces us that the position of the Government is sound."

Except to set forth the argument of both the applicant and the Government, the Court nowhere in its opinion made any attempt to analyze or interpret the language of the statute for itself, but relied on extracts of the legislative history out of the context of the statutory language to arrive at its decision. The Court of Appeals for the Third Circuit has, therefore, taken a clearly worded statute, treated it as ambiguous, then used such history to create a statutory scheme contrary to the specific words used in the statute.

The Petitioner requests that the Supreme Court apply its rules of statutory construction to give effect to the clear meaning of the plain words of the statute.

Conclusion.

For the reasons set forth above, it is respectfully submitted that the decision of the Court of Appeals for the Fifth Circuit be reversed, and that National Bulk's petition for certiorari be granted and the decision of the Court of Appeals for the Third Circuit be reversed.

Respectfully submitted,

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Of Counsel,
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February 18, 1965.

Certificate of Service.

I, JACQUIN D. BIERMAN, a member of the Bar of the Supreme Court of the United States, hereby certify that on the 18th day of February, 1965, I served a copy of the foregoing *amicus curiae* brief by depositing same at a United States post office, with first class postage prepaid, addressed to each of the following attorneys of and for the United States in Department of Justice, Washington 25, D. C.:

1. The Honorable Archibald Cox, Solicitor General.

2. The Honorable John S. Jones, Acting Assistant Attorney General.

3. The Honorable I. Henry Kutz and David I. Granger, Attorneys, Department of Justice.

JACQUIN D. BIERMAN.